



**MAGISTRATE JUDGE JAMES P. HUTTON**  
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### **STANDING ORDER SETTING SETTLEMENT CONFERENCE**

The Court believes the parties should fully explore and consider settlement at the earliest opportunity. Early consideration of settlement can prevent unnecessary litigation. This allows the parties to avoid the substantial cost, expenditure of time, and stress that are typically a part of the litigation process. Even for those cases that cannot be resolved through settlement, early consideration of settlement can allow the parties to better understand the factual and legal nature of their dispute and streamline the issues to be litigated. This Standing Order supercedes LR 16.2 to the extent they are inconsistent with each other.

Consideration of settlement is a serious matter that requires thorough preparation prior to the settlement conference. Set forth below are the procedures the Court will require the parties to follow and the procedures the Court typically will employ in conducting the conference.

#### **A. FORMAT**

**1. PRESETTLEMENT CONFERENCE EXCHANGE OF DEMAND AND OFFER.** A settlement conference is more likely to be productive if, before the conference, the parties exchange written settlement proposals. Accordingly, at least twenty (20) days prior to the settlement conference, plaintiff's counsel shall submit a written itemization of damages and settlement demand to defendant's counsel with a brief explanation of why such a settlement is appropriate. No later than ten (10) days prior to the settlement conference, defendant's counsel shall submit a written offer to plaintiff's counsel with a brief explanation of why such a settlement is appropriate. On occasion, this process will lead directly to a settlement. If settlement is not achieved, Plaintiff's counsel shall deliver, e-mail or fax copies of all letters

to Judge Hutton's chambers no later than five (5) business days before the conference. Do not file copies of these letters on the court docket. In addition, the parties may expect ex parte contact from Judge Hutton in advance of the settlement conference if he has questions or concerns about issues in the case.

**2. ATTENDANCE OF PARTIES REQUIRED. Parties with full and complete settlement authority are required to personally attend the conference.** An insured party shall appear by a representative of the insurer who is authorized to negotiate, and who has *authority to settle the matter up to the limits of the opposing parties' existing settlement demand*. An uninsured corporate party shall appear by a representative authorized to negotiate, and who has *authority to settle the matter up to the amount of the opposing parties' existing settlement demand or offer*. Having a client with authority available by telephone is *not* an acceptable alternative, except under the most extenuating circumstances.\* Because the Court generally sets aside at least two hours for each conference, it is impossible for a party who is not present to appreciate the process and the reasons which may justify a change in one's perspective towards settlement.

**3. MEDIATION FORMAT.** The Court will generally use a mediation format: that is, a joint session with opening presentations by the Court and each side followed by private caucusing by the Court with each side. The Court expects both the lawyers and the party representatives to be fully prepared to participate. The Court encourages all parties to keep an open mind in order to re-assess their previous positions and to discover creative means for resolving the dispute.

**4. STATEMENTS INADMISSIBLE.** The Court expects the parties to address each other with courtesy and respect. Parties are encouraged to be frank and open in their discussions. As a result, statements made by any party during the settlement conference are not to be used in discovery and will not be admissible at trial.

## **B. ISSUES TO BE DISCUSSED**

Parties should be prepared to discuss the following at the settlement conference:

1. What are your goals in the litigation and what problems would you like to address in the settlement conference? What do you understand are the opposing side's goals?
2. What issues (in and outside of this lawsuit) need to be resolved? What are the strengths and weaknesses of your case?
3. Do you understand the opposing side's view of the case? What is wrong with their perception? What is right with their perception?
4. What are the points of agreement and disagreement between the parties? Factual? Legal?

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\*The purchase of an airplane ticket is not an extenuating circumstance.

5. What are the impediments to settlement? Financial? Emotional? Legal?
6. Does settlement or further litigation better enable you to accomplish your goals?
7. Are there possibilities for a creative resolution of the dispute?
8. Do you have adequate information to discuss settlement? If not, how will you obtain sufficient information to make a meaningful settlement discussion possible?
9. Are there outstanding lien holders or third parties who should be invited to participate in the settlement conference?

**C. INVOLVEMENT OF CLIENTS**

Parties and their lead counsel are ORDERED TO APPEAR in Judge Hutton's courtroom on the date and time set for the settlement conference. For many clients, this will be the first time they will participate in a court-supervised settlement conference. Therefore, prior to the settlement conference, counsel shall provide a copy of this Standing Order to the client and shall discuss the points contained herein with the client.

**D. PREPARE FOR SUCCESS**

In anticipation of a settlement, the parties should bring with them to the settlement conference a "Settlement Agreement" in a form acceptable to them for signature by all parties when a settlement is reached.

**ENTER:**

s/James P. Hutton

**JAMES P. HUTTON**  
**United States Magistrate Judge**